IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1937 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL MULA MANCHA MESHRA & 2 - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR SUNIL K SHAH for Petitioner(s) : 1 - 3.
Mr. Pradip Bhate, AGP for Respondent(s) : 1 - 3.
MR PJ VYAS for Respondent(s) : 4, 4.2.1, 4.2.2, 4.2.3,4.2.4 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/09/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, dated 12th January 1994 in Revision Application SRD No. 13/1992.

2. The dispute is with regard to land bearing Survey No.26 admeasuring 2 acres and 28 gunthas of land situate in the Sim of Village Kun Bhashan, Taluka Palanpur. The said land was originally Pashayta Chakariyat Land and one Hemchand Nanchand was the Khatedar of the said land. It is the case on behalf of the petitioners that on coming into force of Miscellaneous Alienation Abolition Act, 1955 all alienations were abolished with effect from 1.8.1955 and Khatedars were granted right to become occupants of the land of their Khata on payment of occupancy price and were liable to pay land revenue to the State. The said land in question came to be purchased by the petitioners vide registered sale deed dated 21.3.1978 from its owner Mistry Chelabhai Hemchand and 2 sons for consideration of Rs. 29,000 and since 1978 they are in possession of the land in question. Necessary Entry which was mutated in the records was rejected on the ground that the suit land was of a new and impartible tenure and as the same was old and fragment without permission from the Collector. Thereafter the Deputy Collector by order dated 21st March 1979 regularised the sale in favour of the petitioners on payment of 20 times the assessment and fine of Rs. 50 as per the Government Resolution dated 11.6.1968. On payment of the above penalty and fine the sale was regularised and necessary Entry was also mutated in the Record of Rights on 21.3.1979 vide Entry No. 1249. After a

period of 10 years the heirs of the original landowner approached the Collector, Banaskantha for taking the order passed by the Deputy Collector, dated 21st March 1979 under suo motu review as the same being illegal, however the Collector, Banaskantha by order dated 14th July 1992 rejected the said application submitted by the heirs of the original landowner, respondents No. 4 and 5 on the ground that there is no reason to take the order passed by the Deputy Collector, Palanpur dated 21st March 1979 under revision. Being aggrieved and dissatisfied with the order passed by the Collector, Banaskantha dated 14th July 1992 in not taking the order passed by the Deputy Collector, Palanpur, dated 21st March 1979 in revision, the heirs of original landowner respondents No. 4 and 5 preferred a Revision Application before the Secretary (Appeals), Revenue Department, State of Gujarat, being Revision Application SRD No. 13/1992 and the Secretary (Appeals) by his order dated 12th January 1994 partly allowed the said Revision Application quashing and setting aside the order passed by the Deputy Collector, Palanpur, dated 21st March 1979 as well as the order passed by the Collector, Banaskantha, dated 14th July 1992 and remanded the matter to the Collector, Banaskantha for initiating proceedings afresh. Being aggrieved and dissatisfied with the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision

Application SRD No. 13/92, the petitioners have

preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Heard the learned advocate, Shri Sunil K. Shah, appearing for the petitioners, Shri PD Bhate, learned AGP appearing on behalf of the State Government, and Shri PJ Vyas, learned advocate appearing on behalf of respondents No. 4 and 5. Shri Sunil K. Shah on behalf of the petitioners has vehemently submitted that the order came to be passed by the Deputy Collector in the month of March 1979 and the proceedings came to be initiated by the heirs of original landowner in the year 1992, and when the Collector, Banaskantha had refused to entertain the request on behalf of the heirs of the original landowner the revisional authority ought not to have remanded the matter to the Collector for initiating the proceedings afresh after a period of almost 16 years and more particularly when the proceedings were initiated after a period of 11 years of the order passed by the Deputy Collector, Palanpur, and therefore it is submitted that on the ground that there was exercise of powers after unreasonable period the proceedings cannot be permitted to be initiated afresh. It is therefore requested to set aside the order passed by the Secretary (Appeals), Revenue Department, i.e., revisional authority dated

12th January 1994. It is also further submitted that in fact the order passed by the Deputy Collector dated 21st March 1979 is in consonance with the Government Resolution dated 11.6.1968 with regard to regularisation of such transaction on payment of 20 times the assessment and fine and therefore on merits also it is requested to allow the present Special Civil Application.

4. Shri PJ Vyas, learned advocate appearing on behalf of the respondents No. 4 and 5 is not in a position to dispute the fact that the order came to be passed by the Deputy Collector on 21st March 1979 regularising the transaction on payment of 20 times the assessment and fine and the proceedings came to be initiated by the heirs of the original landowner only in the year 1992 and therefore they are not in position to support the order passed by the Secretary (Appeals) by which the Secretary has remanded the matter to the Collector for initiation of proceedings after a period of 16 years. However, they have submitted that if the transaction from the very beginning was *non est* the Secretary (Appeals) is justified in directing the Collector to initiate proceedings. It is therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the order came to be passed by the Deputy Collector, Palanpur on 21st March 1979 regularising the sale transaction on payment of 20 times the assessment and fine. The said order passed by the Deputy Collector is considering the Government Resolution dated 11.6.1968 with regard to regularisation of such type of transactions. Necessary entry on the basis of the order dated 21st March 1979 was mutated in the Record of Rights immediately thereafter in the year 1969 itself. No proceedings were initiated upto 1992. For the first time the heirs of original landowner who have sold the land to the petitioners after pocketing the amount of Rs. 29000, approached the Collector for taking the order passed by the Deputy Collector, Palanpur, dated 21st March 1979 under revision. The Collector did not think it fit to take the said order into revision against which the heirs of original landowner preferred revision application before the State Government and the revisional authority passed the impugned order in the year 2000 remanding the matter to the Collector for initiating proceedings afresh. Considering the aforesaid facts and circumstances, the revisional authority State Government ought not to have directed the Collector to initiate the proceedings afresh after unreasonable period of 15 years of the original order. As held by the Hon'ble Supreme Court as well as by this Court in

catena of judgments, the powers are to be exercised within a reasonable period. In the present case, the order of the revisional authority passed after a period of 15 years after the original order was passed, by which the Collector was directed to initiate proceedings afresh, cannot be said to be an order passed within a reasonable period. Under the circumstances, the impugned order passed by the Secretary (Appeals) is required to be quashed and set aside more particularly when it is prima facie established that the order passed by the Deputy Collector was in consonance with the Government Resolution dated 11th June 1968.

6. For the foregoing reasons, the petition succeeds. The judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, dated 12th January 1994 passed in Revision Application SRD No. 13/1992 is hereby quashed and set aside. Rule is made absolute, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.